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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,163	08/17/2001	William Ellis Leslie	RSW920010164US1	4683

7590 05/09/2005

IBM CORPORATION  
INTELLECTUAL PROPERTY LAW  
DEPT. IQOA/BLDG. 040-3  
1701 NORTH STREET  
ENDICOTT,, NY 13760

EXAMINER
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SMITH, TRACI L

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/932,163

**Applicant(s)**

LESLIE ET AL.

**Examiner**

Traci L Smith

**Art Unit**

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 11-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 11-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

1. This action is in response to papers filed on March 7, 2005.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 12-16 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the use of an algorithm(Pg 9 l.16-19), does not reasonably provide enablement for the use of an "majority-vote" algorithm. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The applicant fails to detail the algorithm that is being claim so one skilled in the art would be able to reproduce the same results using the algorithm without undo experimentation. The applicant makes mention of a "sliding-window" algorithm but not majority-vote algorithm.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 11-19, 21-25 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5, 848, 396 Gerace; Method and apparatus for Determining Behavioral Profile of a Computer user.
6. As to claims 1, 11, 18 and 23 Gerace teaches getting information about a user from their internet activity and make inferences from the recorded data(C. 4 I. 10-15).
7. As to claims 2, 16-17 and 28-29 Gerace teaches the system and method being done over the internet(C. 3 I. 62-67).
8. As to claims 12, 19 and 24 Gerace teaches creating a psychographic profile based on habits and patterns of users.
9. As to claims 14, 21, 26 generating reports including profiles and storing the records.(C. 5 I. 38-40 &44-46)
10. As to claims 15, 22 and 27 Gerace teaches customizing information to the customer based on profile.(C. 5 I. 18-22).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 13, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5, 848, 396 Gerace as applied to claim s 1-2, 11-19, 21-25 and 26-29

above, and further in view of US Patent 6,108,645 Eichstaedt et al. Method and apparatus for efficient profile matching in a large scale webcasting system.

13. As to claims 13, 20 and 25 Gerace teaches a system and method for presenting information based on a psychographic profile. However, Gerace fails to teach the profile being populated by an algorithm. Eichstaedt teaches creating profiles using and algorithm.(C. 14 I. 33-36). It would have been obvious to one of ordinary skilled in the art at the time of invention to combine the teachings of Eichstaedt with Gerace so as to have a statistical and efficient method of categorizing users to receive different types of information.

### ***Response to Arguments***

14. Applicant's arguments with respect to claim 1-2 have been considered but are moot in view of the new ground(s) of rejection. The examiner notes that applicant argues the reference used in the action dated December 7, 2004 that tracking does not qualify as logging and concepts and/or emotions does not qualify as an "event" or logging. The examiner takes note that the applicant does not give a new definition of the terms "logging" and "events" in the specification therefore the examiner is able to use the general/ordinary use of the word. The examiner notes according to the Webster Dictionary tracking is defined as to observe or plot a path and logging is defined make a note or record of, when given the broadest reasonable interpretation examiner believes the tracking falls within the definition of logging. The same interpretation applies to emotion vs. event. Event is "something that happens" and an emotion is a physical

reaction involving changes. The examiner interprets an a emotion as something that happens.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,850,891 A method and system converting data and judgements to values or priorities.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

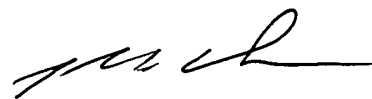
17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L Smith whose telephone number is 572-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tls



JOHN G. WEISS  
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